IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34113

STATE OF IDAHO,	)	**2008 Unpublished Opinion No. 520**
	)	
Plaintiff-Respondent,	)	**Filed: June 23, 2008**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
MICHAEL CHARLES SPRINGS,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Clearwater County. Hon. John H. Bradbury, District Judge.

Judgment of conviction and unified sentence of twenty-five years, with a minimum period of confinement of twelve and one-half years, for trafficking in methamphetamine and unlawful possession of a firearm, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Michael Charles Springs appeals from his judgment of conviction and sentence for trafficking in methamphetamine and unlawful possession of a firearm. Specifically, Springs challenges the district court's denial of his motion to suppress and the legality and excessiveness of his sentence. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

Three months prior to Springs's arrest, a confidential informant (CI-1) told a detective from the Clearwater County Sheriff's Office that Springs was supplying methamphetamine to another individual who was under investigation by the sheriff's office. The detective then contacted an officer from the Lewiston Police Department who was familiar with Springs and his history. The Lewiston officer informed the detective of Springs's prior arrests and convictions

for drug offenses and violent crimes and indicated that Springs was under investigation by the Quad Cities Task Force for possible drug dealing.

About one week prior to Springs's arrest, another confidential informant (CI-2) told the detective that Springs was in the Orofino area dealing methamphetamine and described the car Springs was driving. The night before Springs's arrest, CI-1 told the detective that Springs was regularly visiting an apartment complex where multiple known drug offenders lived. The day of Springs's arrest, CI-2 told the detective that Springs was at Faulkner's apartment--a man the detective knew to be associated with drugs. Later that day, the informant told the detective that Springs left Faulkner's apartment for Parker's apartment--another individual the detective knew was involved with methamphetamine.

Officers went to Parker's apartment and waited in the parking lot next to Springs's car. After approximately fifteen minutes, Springs emerged. The detective identified himself as a police officer and told Springs to put his hands on his head. Springs reached toward his waistline and the officers drew their weapons and again ordered Springs to place his hands on his head. The detective asked Springs if he had a weapon, and Springs replied that he did and it was in his waistband. The detective removed a loaded semi-automatic handgun, which Springs stated he did not have a permit for. Springs was placed under arrest and a subsequent search incident to arrest revealed several baggies of methamphetamine, over $1000 in cash, marijuana, and an electric scale.

The state charged Springs with possession of a controlled substance with intent to deliver, trafficking in methamphetamine, unlawful possession of a firearm, use of a firearm during the commission of a crime, and possession of a controlled substance and alleged that Springs was a persistent violator. Springs filed a motion to suppress the evidence, arguing that the officers did not possess a reasonable and articulable suspicion that Springs was engaged in criminal activity when they confronted him in the parking lot. The detective testified at the hearing on Springs's motion to suppress. The district court denied Springs's motion to suppress, and Springs pled guilty to trafficking in methamphetamine, I.C. § 37-2732(a)(1)(A), and unlawful possession of a firearm, I.C. § 18-3316, and the remaining charges were dismissed. The district court sentenced Springs to a unified term of twenty-five years, with a minimum period of confinement of twelve and one-half years. Springs appeals.

II.
ANALYSIS

A. Motion to Suppress

A warrantless search is presumptively unreasonable unless it falls within certain special and well-delineated exceptions to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *State v. Ferreira*, 133 Idaho 474, 479, 988 P.2d 700, 705 (Ct. App. 1999). In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court created a stop-and-frisk exception to the Fourth Amendment warrant requirement. The stop and the frisk constitute two independent actions, each requiring a distinct and separate justification. *State v. Babb*, 133 Idaho 890, 892, 994 P.2d 633, 635 (Ct. App. 2000); *State v. Fleenor*, 133 Idaho 552, 556, 989 P.2d 784, 788 (Ct. App. 1999).

The stop is justified if there is a reasonable and articulable suspicion that the individual has committed or is about to commit a crime. *Florida v. Royer*, 460 U.S. 491 (1983); *Terry*, 392 U.S. at 30; *State v. DuValt*, 131 Idaho 550, 553, 961 P.2d 641, 644 (1998); *Ferreira*, 133 Idaho at 479, 988 P.2d at 705. Springs challenges the stop, asserting that the district court erred in denying his motion to suppress because the state failed to prove that the officers had a reasonable and articulable suspicion that Springs committed a crime. The state counters by arguing that the totality of the facts known to the detective when he stopped Springs for questioning, combined with the reasonable inferences to be drawn from those facts, provided the detective with a reasonable and articulable basis to believe that criminal activity was afoot.

An informant's tip that a suspect is dealing drugs, corroborated by the suspect's association with known drug offenders, contributes to a finding of reasonable suspicion sufficient to justify extending the duration of a traffic stop. *See State v. Sheldon*, 139 Idaho 980, 985, 88 P.3d 1220, 1225 (Ct. App. 2003). In *Sheldon*, this Court was asked to determine whether the police had sufficient reasonable suspicion of illegal drug activity so as to justify questioning that extended the duration of a traffic stop. We noted that, because the officer knew the identities of the two informants who provided the information that Sheldon was dealing drugs, there was "some modicum of reliability." *Id.* Based on informants' tips that Sheldon was dealing drugs, coupled with Sheldon's having left a house associated with drug activities at 3 a.m. and his bloodshot and glassy eyes that were apparently not the result of alcohol consumption, this Court concluded that the officer possessed a reasonable suspicion of illegal

drug activity so as to allow the officer to extend the duration of a traffic stop to inquire about drugs. *Id.*

In this case, the issue is whether, based on the totality of the circumstances, the officers possessed a reasonable and articulable suspicion that Springs had committed or was about to commit a crime. Springs has not argued that the sources of information in his case were unreliable. The district court held that Springs was seized for the purposes of a Fourth Amendment analysis when the two officers aimed their firearms at him.

The district court described the uncontradicted evidence as supporting the following factual findings:

> 1. Mr. Springs was suspected of dealing in drugs.
> 2. Mr. Springs had a criminal record and a history of violence.
> 3. He was known to drive a standard size white car with California license plates.
> 4. A known and reliable informant told [the detective] that Mr. Springs was making trips to Orofino where he was selling drugs.
> 5. On the day before the arrest, a known and reliable source told [the detective] that Mr. Springs had been at an apartment house in Orofino where at least four known methamphetamine users lived.
> 6. One of the residents was [Faulkner], a man known to [the detective] to be a user.
> 7. On the day of the arrest a known and reliable source told [the detective] that Mr. Springs was at [Faulkner's] apartment and cautioned him that Mr. Springs had been in an altercation at which he had used a knife.
> 8. The same source told [the detective] that Mr. Springs had left [Faulkner's] for Dianna Parker's apartment.
> 9. Ms. Parker was known to [the detective] to be a methamphetamine user who was being investigated by the Nez Perce tribal police for that activity.
> 10. Mr. Springs left the apartment house where Ms. Parker resided a short time after having been there.
> 11. Mr. [Springs's] description matched the one [the detective] had been given by the Lewiston Police Department.
> 12. A white standard size car with California license plates was in the parking lot of the apartment house where Ms. Parker lived.
> 13. Based on [the detective's] extensive experience with drug offenses, drug deals are usually consummated in a short period of time.

The district court further noted that the detective did not actually know that Springs had been at Parker's apartment and did not know the precise amount of time Springs spent there. However, the district court concluded that it was objectively reasonable for the detective to conclude that Springs was at Parker's apartment when a reliable source stated as much and

Springs's car was found in the apartment parking lot. As far as the length of time spent at Parker's apartment, the district court pointed out that the detective knew when Springs left Faulkner's apartment and when Springs left Parker's apartment. Based upon this short time frame, the district court concluded that it was objectively reasonable for the detective to suspect Springs had just sold methamphetamine to Parker.

On appeal, Springs argues that the district court did not define a short period of time--the amount of time Springs spent at Parker's apartment--and argues that the detective's source did not provide information that Springs went to Parker's apartment to sell her methamphetamine. Springs's argument is entirely misplaced. In order to stop and question Springs, the officers did not have to possess reasonable suspicion that he was committing a crime at that moment or within the last few minutes. They only needed suspicion that he had committed a crime. Information possessed by the officers was more than ample to create a reasonable suspicion that he had been involved in illegal activity.

In addition to the district court's findings, the detective further testified that Springs was first brought to his attention approximately three months before this incident when CI-1 told the detective that Springs was supplying methamphetamine to an individual under investigation. At the time of Springs's arrest, that individual was in custody on multiple felony drug counts. Additionally, an officer from Lewiston who was involved with the Quad Cities Task Force told the detective that Springs was being investigated by the task force for dealing drugs. One week before Springs's arrest, CI-2 told the detective that Springs was regularly visiting a particular address, and the detective had recovered methamphetamine paraphernalia from that address one month prior. The day before Springs's arrest, CI-1 confirmed that Springs was regularly visiting an apartment complex where the detective knew four drug users were living--one of whom was Faulkner. The day of Springs's arrest CI-1 told the detective that Springs was again at the apartment complex, visiting Faulkner's apartment. That same day, the detective testified that he was in the process of preparing to apply for a search warrant for marijuana to search Faulkner's apartment. Based on the tips provided by the confidential informants, the officers parked next to Springs's car and waited approximately fifteen minutes for Springs to emerge from Parker's apartment. The detective testified that short-term visits are indicative of drug transactions.

Like the facts in *Sheldon*, the information that Springs was dealing methamphetamine was then corroborated by his association with multiple known drug offenders at two separate

apartments within a short period of time. Springs has failed to show error in the district court's conclusion that the detective possessed a reasonable and articulable suspicion that Springs had committed a crime when the detective approached him in the apartment parking lot.

B. Illegal Sentence

Springs asserts that the "district court acted outside the bounds of its discretion, thus abusing its discretion" by sentencing him to a unified term of twenty-five years, with a minimum period of confinement of twelve and one-half years, for unlawful possession of a firearm because the maximum penalty for possession of a firearm is five years. The state counters by arguing that a claim that a sentence is illegal cannot be raised for the first time on appeal.

The issue of illegality of a sentence may not be raised for the first time on appeal without the trial court having first had an opportunity to consider the legality of the terms of the sentence. *State v. Martin*, 119 Idaho 577, 579, 808 P.2d 1322, 1324 (1991); *State v. Hoffman*, 137 Idaho 897, 903, 55 P.3d 890, 896 (Ct. App. 2002). As this Court noted in *Hoffman*, the claim that a sentence is illegal should be pursued by filing an Idaho Criminal Rule 35 motion with the district court. *Id.*

Accordingly, to the extent that Springs's brief presents an issue that the district court acted outside the bounds of its legal authority making his sentence illegal, we decline to review his claim which is raised for the first time on appeal.

C. Excessive Sentence

Springs argues that his unified sentence of twenty-five years, with a minimum period of confinement of twelve and one-half years, is excessive given his remorse, intelligence, and potential for rehabilitation. An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the

sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

At the time Springs's presentence investigation report was completed, he had convictions for possession/use/distribution of hashish while in the military, sale of a controlled substance and possession of a controlled substance on school grounds, multiple assault convictions, criminal impersonation, criminal contempt, two felony sale of controlled substance convictions, a felony possession of a loaded firearm, and domestic battery. Furthermore, he had two pending felony charges of aggravated battery in Idaho and a pending felony drug possession charge from California. The district court began by discussing the sentencing criteria and protection of the public. The district court described selling methamphetamine as a lethal undertaking and then stated that "selling death and carrying a weapon that has no other [purpose] than to injure and kill people is what--is what danger to society is all about." The district court noted all of the rehabilitation programs Springs had completed while in prison in New York and surmised that they were ineffective. The district court concluded, "I think you pose a serious, serious risk to society, and I don't think that there is a way that I could justify not sending you to prison." The district court reviewed the sentencing objectives and determined that Springs's crimes, coupled with his long and violent history, required a substantial term of incarceration to protect the public from him. We conclude that Springs has not shown that the district court abused its discretion.

III.

CONCLUSION

The district court correctly determined that the detective had a reasonable and articulable suspicion that Springs was engaged in criminal activity when he approached Springs in the apartment parking lot. We decline to review Springs's contention, raised for the first time on appeal, that his sentence for unlawful possession of a firearm is illegal. Furthermore, we conclude that the district court did not abuse its discretion by imposing a unified sentence of twenty-five years, with a minimum period of confinement of twelve and one-half years, for trafficking methamphetamine and unlawful possession of a firearm. Therefore, Springs's

judgment of conviction and sentence for trafficking methamphetamine and unlawful possession of a firearm are affirmed.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**